

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REVISIONS
TO THE STATE IMPLEMENTATION PLAN
FOR REGIONAL HAZE UNDER 40 CFR § 51.309**

No. EIB 11- 01(R)

**NMED'S PROPOSED
ORDER AND STATEMENT OF REASONS
FOR ADOPTION OF SIP REVISIONS**

This matter comes before the New Mexico Environmental Improvement Board ("Board") upon a petition filed by the New Mexico Environment Department ("NMED" or "Department"), proposing amendments to New Mexico's State Implementation Plan (SIP) under the federal Regional Haze Rule Section 309 and associated amendments to 20.2.73 and 20.2.81 NMAC; and proposing new provisions pursuant to Section 309(g) including but not limited to a determination of Best Available Retrofit Technology (BART) for the San Juan Generating Station. A public hearing was held in Santa Fe, New Mexico on June 1, 2011, and in Farmington, New Mexico on June ____, 2011 with a quorum of the Board present during the hearing. The Board heard technical testimony from the Department and other parties and admitted exhibits into the record. On ____, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

II. STATEMENT OF REASONS

1. The federal Clean Air Act (CAA) requires states to submit State Implementation Plans (SIPs) to address visibility impairment caused by regional haze at certain National Parks, Wilderness Areas, and other federally protected areas ("Class I areas"), in accordance

with regulations promulgated by the U.S. Environmental Protection Agency (EPA).

CAA §§ 169A & 169B (42 U.S.C. §§ 7491 & 7492).

2. The EPA regulations governing SIP submittals under CAA 169A and 169B are contained in 40 C.F.R. 51.308 – 51.309 (“Regional Haze Rule Sections 308 and 309”).
3. In December 2003 the Board approved a SIP developed by NMED to comply with the Requirements of Regional Haze Rule Section 309. The Department has implemented this “Section 309 SIP” continuously since that time. EPA has never acted upon this SIP submittal.
4. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.
5. On February 28, 2011 NMED filed a petition with the Board for a public hearing in this matter.
6. In its petition, the Department proposed revisions to the Section 309 SIP, developed in consultation with EPA in order to make the SIP approvable in light of developments since 2003. The Department also proposed new provisions to expand the scope of the SIP to all Class I areas in the State, in accordance with Section 309(g). Included in these new provisions is a determination of the Best Available Retrofit Technology (BART) for the San Juan Generating Station.
7. On March 15, 2011, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department’s request for a hearing in June, 2011 and appointed Felicia Orth, Esq. as the Hearing Officer.

8. On March 31, 2011, Notice of Hearing was published in the Navajo Times, the Farmington Daily Times (in English and Spanish), the Albuquerque Journal (in English and Spanish) and the New Mexico Register. See NMED Exhibit 12.
9. On March 31, 2011 the Hearing Officer issued an Order Establishing Procedures.
10. On April 1, 2011, NMED filed a Notice of Revisions to the Proposed Implementation Plan.
11. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on May 2, 2011, in accordance with the Order Establishing Procedures.
12. NMED's NOI included additional proposed revisions to the SIPs under the Regional Haze Rule Section 309 and 309(g). See NMED Exhibits 10 and 11.
13. On Friday, May 13, 2011, NMED received comments on the proposed SIP revisions from the U.S. Environmental Protection Agency (EPA), Region 6. NMED filed these comments with the Board on Monday, May 16, 2011, with a "Notice of Receipt of Comments."
14. On May 17, 2011, NOI's were filed by Public Service Company of New Mexico and by San Juan Coal Company.
15. Also on May 17, 2011, Entries of Appearance were filed by counsel for M-S-R Public Power Agency and for the Western Environmental Law Center (representing the Natural Resources Defense Council, San Juan Citizens Alliance, and WildEarth Guardians).
16. On May 20, 2011, NMED filed a Supplemental NOI, to address EPA's May 13, 2011 comments.
17. A hearing was convened in this matter on June 1, 2011 in Santa Fe, New Mexico, and continued in Farmington, New Mexico on June _____, 2011.

18. Pursuant to the Order Establishing Procedure, NMED pre-filed its technical testimony in full narrative form with its NOI, and provided a brief summary at the hearing.
19. The proposed revisions to the 2003 “Section 309 SIP” are necessary and appropriate to reflect: updated modeling of visibility improvement; revisions to the sulfur dioxide backstop trading program necessitated by changes in the number of states participating and changes in emissions sources; EPA’s approval in 2006 of New Mexico’s SIP for “Reasonable Attributable Visibility Impairment;” and a demonstration that the SO₂ milestones provide “greater reasonable progress” than would BART. The proposed revisions to 20.2.73 and 20.2.81 NMAC are necessary to implement these revisions to the Section 309 SIP.
20. The SIP provisions proposed pursuant to Section 309(g) of the Regional Haze Rule satisfy the requirements of that section by: [1] providing a demonstration of expected visibility conditions as specified at 40 CFR § 51.309(g)(1); [2] providing reasonable progress goals for each Class I area, in accordance with 40 CFR §§ 51.308(d)(1) – (4), as required by 40 CFR § 51.309(g)(2), and [3] addressing BART requirements for nitrogen oxides (NO_x) and Particulate Matter (PM), in accordance with 40 CFR § 51.308(e)(1) and 40 CFR § 51.308(d)(4)(vii) and as required by 40 CFR § 51.309(g)(2).
21. NMED’s BART determination for the only source in New Mexico subject to BART, the San Juan Generating Station, complies with the guidelines for such determinations promulgated by the EPA at Appendix Y to 40 CFR Part 51 and is within the discretion for such determinations afforded to states by CAA §§ 169A & 169B.
22. The Board has the authority to approve these proposed amendments pursuant to NMSA 1978 Sections 74-2-5 (B) & (C).

23. In accordance with NMSA 1978 Section 74-2-5(C)(1)(a), the proposed SIP revisions and regulations are no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas.
24. The proposed amendments satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).
25. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and Section 74-1-9 and 20.1.1 NMAC were satisfied in this rulemaking process.
26. The proposed amendments are adopted for any or all of the reasons stated above.

III. ORDER

By majority vote of a quorum of the Board members, the proposed SIP revisions and regulatory amendments were approved by the Board on June _____, 2011. The SIP revisions proposed by the Department in its February 28, 2011 petition, as revised by amendments proposed by the Department on April 1, May 2, and May 20, 2011, in the submissions described above, are to be submitted as expeditiously as possible by the Department to the EPA for approval. Amendments to 20.2.73 and 20.2.81 NMAC, with any appropriate corrections of typographical errors, or formatting shall be filed with the New Mexico State Records Center.

On Behalf of the Board

Dated: _____